

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

JOHN DITTOE,

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Plaintiff,

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V.

CIVIL ACTION NO. 5:23-CV-60-RWS-JBB

BRYAN COLLIER, ET AL.,

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Defendant.

ORDER

Before the Court is Plaintiff John Dittoe's civil rights lawsuit against officials of the Texas Department of Criminal Justice, Correctional Institutions Division. Docket No. 1. The case was referred to United States Magistrate Judge Boone Baxter in accordance with 28 U.S.C. § 636. The Magistrate Judge issued a Report recommending that Plaintiff's claims be dismissed without prejudice for failure to prosecute or obey an order of the Court. Docket No. 40.

After filing his original complaint, Plaintiff filed an amended complaint with supplemental claims. Docket No. 9. The Court ordered that Plaintiff file a single amended complaint identifying the claims he wished to raise. Docket No. 37. The Court provided guidance and cautioned Plaintiff that failure to comply with the order may result in dismissal of this action. *Id.* A copy of the order was sent to Plaintiff's last known address, but no response was received. Accordingly, the Magistrate Judge issued this Report recommending that the case be dismissed for failure to prosecute. Docket No. 40. A copy of this Report was also sent to Plaintiff's last known address and was returned as undeliverable. Docket No. 41. To date, Plaintiff has not advised the Court of his current mailing address. The complaint form which Plaintiff signed contains a declaration saying, "I understand, if I am released or transferred, it is my responsibility to keep the court

informed of my current mailing address and failure to do so may result in the dismissal of this lawsuit.” Docket No. 1 at 6; *see also* Local Rule CV-11(d) (“A *pro se* litigant must provide the Court with a physical address . . . and is responsible for keeping the clerk advised in writing of his or her current physical address.”). To date, no response has been received and no objections have been filed.

Because no objections have been received, Plaintiff is barred from *de novo* review by the District Judge of the Magistrate Judge’s proposed findings, conclusions and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the District Court. *See Duarte v. City of Lewisville, Texas*, 858 F.3d 348, 352 (5th Cir. 2017); *Arriaga v. Laxminarayan*, Case No. 4:21-CV-00203-RAS, 2021 WL 3287683, at *1 (E.D. Tex. July 31, 2021).

The Court has reviewed the pleadings in this case and the Report of the Magistrate Judge. Upon such review, the Court has determined the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989) (where no objections to a Magistrate Judge’s Report are filed, the standard of review is “clearly erroneous, abuse of discretion and contrary to law”). Accordingly, it is

ORDERED that the Report of the Magistrate Judge (Docket No. 40) is **ADOPTED** as the opinion of the District Court. It is further

ORDERED that the above-captioned action is **DISMISSED WIHTOUT PREJUDICE** for failure to prosecute or obey an order of the Court.

So ORDERED and SIGNED this 2nd day of August, 2024.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE